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Paper No. 7

In re Application of
Randy Henry
Application No. 09/360,881
Filed: July 23, 1999
Attorney Docket No. HE01-003

: DECISION ON PETITION

:

This is a decision on the petition filed that was originally filed on December 2, 2001 and has now been resubmitted on March 1, 2004 by which petitioner requests withdrawal of the examiner's holding that this application stands abandoned for failure to file a proper and timely reply to the Office action dated April 11, 2001. The petition is considered pursuant to 37 CFR 1.181, and no fee is required.

The petition is granted.

Petitioner alleges that this application is not abandoned because a proper reply to the Office letter in question was in fact filed on October 11, 2001. Petitioner further alleges that the reply was timely because it was accompanied by a request for extension of time and the fee of \$460.00 for a three month extension. Petitioner supports these allegations by furnishing a copy of a request for the filing of a Continued Prosecution Application (CPA) under 37 CFR 1.53(d), a copy of a preliminary amendment and an itemized filing receipt for these items showing that they were in fact received in the Office on October 11, 2001, a date within the period set by the Office letter in question for filing a reply, as extended by three months. Based upon this evidence, it is clear that this application is not abandoned. It is also noted that the fee for the CPA and the fee for the extension have in fact been received by the Office and applied.

Accordingly, the Notice of Abandonment is hereby vacated, the holding of abandonment is withdrawn, and the application is restored to pending status. The application is being forwarded to the Head Supervisory Applications Examiner for processing as a CPA, and entry of the concurrently filed preliminary amendment. The date of the CPA will be October 1, 2001. Thereafter, the application will be forwarded to the examiner for action.

Petitioner should note that 37 CFR 1.53(d) was amended, effective July 14, 2003, to abolish CPA practice with respect to nonprovisional utility applications. See 68 Fed. Reg. 32376, Vol. 68, No. 104. While the request for the filing of a CPA obviously predates the rule change, and while the application obviously qualified for CPA practice under the previous version of 37 CFR 1.53(d), it may not be systematically possible to create a CPA. In that unlikely event, petitioner will be so notified and the request for filing a CPA will be treated as a Request for Continued Examination (RCE) pursuant to 37 CFR 1.114. See also MPEP § 706.07(h), item IV.

PETITION GRANTED.

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